IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.32 OF 2007

The State of Maharasthra ...Applicant.
V/s.
Ganesh Harishchandra More & Anr. ...Respondents.

adv. for the Applicant.
adv.for the Respondent.

CORAM: J.H.BHATIA, J.
DATE : 22nd February, 2007.

P.C.:

1. Heard Mr.Nikam, the learned APP for the State. In view of the impugned order, I propose to dispose of this revision at the stage of admission itself without any notice to the respondents.

2. In this revision application, the prosecution has challenged the order passed by the First Ad-hoc Additional Sessions Judge, Sewree, Bombay rejecting the application Exhibit 29 to issue summons to police inspector S.M.Tadkar, PSI Ramchandra More and the order rejecting the application Exhibit 31 seeking issuance of bailable warrant against the complainant Firoj Shilar Khan and to issue summons to the witnesses shown in the list from serial numbers 21 to 27. The learned First Ad-hoc Additional Sessions Judge observed on the application Exhibit 29 that since August, 2006, no steps

were taken nor any report was submitted about the service or otherwise of the summons even though the matter was adjourned thrice. From this it appears that either the concerned Public Prosecutor or the concerned police machinery was not diligent in taking the proper steps for issuance of summons or their service. As the matter was pending at the stage of trial for a period of 4 months, the learned First Ad-hoc Additional Sessions Judge rejected the prayer made by the prosecution.

2. It should be noted that it is the offence under Section 302 of the I.P.C. The incident had occurred in December, 2005. The interest of justice requires that summons should be issued to the witnesses if it is necessary. Similarly, if any witness does not turn up in spite of summons, coercive action may be taken to secure his presence. The learned Additional Sessions Judge appears to have ignored this aspect. Infact he should have noticed that by rejecting the prayer for issuance of summons, the prosecution case was being made weak and the benefit could be given to the accused and in the result justice may not be done. In the impugned order accused persons had no role to play and therefore, I find that it is not necessary to issue even notices to the respondents. The sessions case is pending for trial and is fixed today. Issue of notice will cause

unnecessary delay. In my opinion, this revision may be disposed off by giving appropriate directions to the First Ad-hoc Additional Sessions Judge in the interest of justice.

3. The First Ad-hoc Additional Sessions Judge, Sewree, Bombay shall issue summons to the witnesses from Serial Numbers 21 to 27 as shown in the list including the police inspector P.R.Tadkar and PSI More. He shall also verify whether the complainant was previously served with summons and in spite of that he had remained absent. If it is so, he shall issue bailable warrant for securing his presence, but if summons is not served on him, fresh summons may be issued. Appropriate order shall be passed by the learned First Ad-hoc Additional Sessions Judge in the interest of justice. The prosecution machinery shall diligently serve the summons or execute the warrants if it is issued and shall keep the witnesses present.

4. Revision application stands disposed off with the aforesaid directions.

5. Parties shall act on an authenticated copy of the order.

(J.H.Bhatia,J.)